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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ANA GARIBAY,

12 Petitioner,

13 vs.

14 JAVIER CAVAZOS, Warden, et al.,

15 Respondents.
16

CASE NO. 10cv1645 BEN (JMA)

**ORDER ADOPTING REPORT
AND RECOMMENDATION
AND DISMISSING PETITION**

17 Petitioner Ana Garibay filed a petition for writ of habeas corpus under 28 U.S.C. §
18 2254. Respondent moved to dismiss the Petition as time-barred by the applicable statute of
19 limitations. Dkt. No. 11. Petitioner did not oppose the motion.

20 Magistrate Judge Jan M. Adler issued a thoughtful and thorough Report and
21 Recommendation recommending Respondent's motion be granted and the Petition be
22 dismissed. Dkt. No. 12. Any objections to the Report and Recommendation were due March
23 28, 2011. *Id.* Petitioner did not file any objections. Having reviewed the matter de novo and
24 for the reasons that follow, the Report and Recommendation is **ADOPTED** and the Petition
25 is **DISMISSED**.

26 A district judge "may accept, reject, or modify the recommended disposition" of a
27 Magistrate Judge on a dispositive matter. FED. R. CIV. P. 72(b)(3); *see also* 28 U.S.C.
28 §636(b)(1). "[T]he district judge must determine de novo any part of the [report and


1 recommendation] that has been properly objected to.” FED. R. CIV. P. 72(b)(3). However,
2 “[t]he statute makes it clear that the district judge must review the magistrate judge’s findings
3 and recommendations de novo *if objection is made*, but not otherwise.” *United States v.*
4 *Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (emphasis in original), *cert*
5 *denied*, 540 U.S. 900 (2003); *see also Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir.
6 2005). “Neither the Constitution nor the statute requires a district judge to review, de novo,
7 findings and recommendations that the parties themselves accept as correct.” *Reyna-Tapia*,
8 328 F.3d at 1121. Accordingly, the Court may grant Respondent’s motion to dismiss on this
9 basis alone.

10 The Court has, however, reviewed the matter de novo and agrees that the motion to
11 dismiss should be granted because the Petition is time-barred by the Antiterrorism and
12 Effective Death Penalty Act’s one-year statute of limitations. The statute of limitations expired
13 on May 27, 2010 and Petitioner did not file her Petition until July 28, 2010. Furthermore,
14 Petitioner is not entitled to statutory tolling and she has not demonstrated she is entitled to
15 equitable tolling.

16 In the absence of any objections and after a de novo review, the Court fully **ADOPTS**
17 Judge Adler’s Report. The Petition is **DISMISSED**.

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19 **IT IS SO ORDERED.**

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21 DATED: April 13, 2011

22 
23 Hon. Roger T. Benitez
24 United States District Judge
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